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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,306	06/23/2003	Christopher Bangle	080437.52447US	7952
23911	7590	03/21/2005	EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			GUTMAN, HILARY L	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/601,306

Applicant(s)

BANGLE ET AL.

Examiner

Hilary Gutman

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-59 is/are pending in the application.
- 4a) Of the above claim(s) 4-6, 11-13 and 28-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 7, 9, 14, 15, 20, 50, 54, 55 and 59 is/are rejected.
- 7) ☒ Claim(s) 8, 10, 16-19, 21-27, 51-53 and 56-58 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of species E in the reply filed on 10/20/04 is acknowledged.
2. Claims 4-6, 11-13, and 28-48 are hereby withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/20/04.

### *Claim Objections*

3. Claims 49-51, 53-58 are objected to because of the following informalities:  
  
Claim 49 should be canceled.  
  
Claims 50-51 and 53-58, line 1, "to claim 49" should be "to claim 1".  
  
Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

Art Unit: 3612

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1, 3, 7, 9, 14, 15, 20, 50, and 54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '663 in view of Smith et al. (6,398,287).

DE '663 discloses a section of a body of a vehicle comprising: a flexible material outer skin that is tensed at least over one part of a frame of the vehicle (Figure 1), has elastic properties, and is a flexible textile planar formation, and at least one mechanically moveable adjusting element 4, 5, provided beneath or on an edge of the outer skin, enabling the outer skin to be deformed.

DE '663 lacks the flexible textile planar formation to be coated with a coating at least on a visible side.

Smith et al. teach the desirability of coating fabric in order to protect the fabric from the elements and allow the fabric to be long lasting and aesthetically pleasing.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a coating as taught by Smith et al. upon the fabric of DE '663 in order to better protect the fabric and provide better aesthetics.

With regard to claim 3, the flexible material outer skin can absorb impact energy during an accident.

With regard to claim 7, the at least one adjusting element can be moved in a translatory manner, a rotary manner, or both translatory and rotary manners.

With regard to claim 9, the at least one adjusting element is movable as a function of the vehicle speed.

With regard to claim 14, the adjusting element forms a spoiler, and wherein the adjusting element and a surrounding area on a body side are covered with the flexible material outer skin.

With regard to claim 15, the spoiler and the surrounding area on the body side are designed such that, regardless of the position of the spoiler, no marginal sections of the spoiler become visible in the flexible material outer skin.

With regard to claim 20, the flexible material outer skin is additionally stretched across at least one rod which is mounted to the spoiler on one end.

With regard to claim 50, the textile planar formation is a knitted fabric or other fabric.

With regard to claim 54, the coating offers UV protection.

With regard to claim 55, the coating is inherently waterproof.

7. Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE '663 in view of Smith et al. (6,398,287).

For claim 59, DE '633 inherently discloses a process of changing a configuration of a section of a body of a vehicle having a flexible material outer skin that is tensed at least over one part of a frame of the vehicle, comprising mechanically moving at least one adjusting element provided beneath or on an edge of the outer skin so as to deform the outer skin, wherein the flexible material outer skin has elastic properties, and is a flexible textile planar formation.

DE '663 lacks the outer skin being coated with a coating at least on a visible side.

Art Unit: 3612

Smith et al. teach the desirability of coating fabric in order to protect the fabric from the elements and allow the fabric to be long lasting and aesthetically pleasing.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a coating as taught by Smith et al. upon the fabric of DE '663 in order to better protect the fabric and provide better aesthetics.

#### ***Allowable Subject Matter***

8. The indicated allowability of claims 9, 20, 49-50, and 54-55 is withdrawn in view of the newly discovered reference(s) to DE '663. Rejections based on the newly cited reference(s) are set forth above.

9. Claims 8, 10, 16-19, 21-27, 51-53, 56-58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

10. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

13. **Any response to this action should be mailed to:**

Assistant Commissioner for Patents

Washington, D.C. 20231


**or faxed to:**

(703) 872-9326, (for formal communications intended for entry)

**or:**

(703) 746-3515, (for informal or draft communications, please clearly label

"PROPOSED" or "DRAFT").

  
Hilary Gutman  
March 8, 2005